

110TH CONGRESS
2D SESSION

H. R. 5611

To reform the National Association of Registered Agents and Brokers, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2008

Mr. SCOTT of Georgia (for himself, Mr. DAVIS of Kentucky, Mr. GERLACH, Mr. MANZULLO, Mr. BARRETT of South Carolina, Mr. NEUGEBAUER, Mr. JONES of North Carolina, Mr. WILSON of Ohio, Mr. CLAY, Mr. ROSS, Mr. MEEKS of New York, Ms. MOORE of Wisconsin, Mr. DONNELLY, Ms. GINNY BROWN-WAITE of Florida, and Mr. LINCOLN DAVIS of Tennessee) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To reform the National Association of Registered Agents
and Brokers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Association
5 of Registered Agents and Brokers Reform Act of 2008”.

1 **SEC. 2. REESTABLISHMENT OF THE NATIONAL ASSOCIA-**
2 **TION OF REGISTERED AGENTS AND BRO-**
3 **KERS.**

4 (a) IN GENERAL.—Subtitle C of title III of the
5 Gramm-Leach-Bliley Act (15 U.S.C. 6751 et seq.) is
6 amended to read as follows:

7 **“Subtitle C—National Association**
8 **of Registered Agents and Brokers**

9 **“SEC. 321. NATIONAL ASSOCIATION OF REGISTERED**
10 **AGENTS AND BROKERS.**

11 “(a) ESTABLISHMENT.—There is established the Na-
12 tional Association of Registered Agents and Brokers
13 (hereafter in this subtitle referred to as the ‘Association’).

14 “(b) STATUS.—The Association shall—

15 “(1) be a nonprofit corporation;

16 “(2) have succession until dissolved by an Act
17 of Congress;

18 “(3) not be an agent or instrumentality of the
19 United States Government; and

20 “(4) except as otherwise provided in this sub-
21 title, be subject to, and have all the powers conferred
22 upon a nonprofit corporation by the District of Co-
23 lumbia Nonprofit Corporation Act (D.C. Code, sec.
24 29–301.01 et seq.).

1 **“SEC. 322. PURPOSE.**

2 “The purpose of the Association shall be to provide
3 a mechanism through which licensing, continuing edu-
4 cation, and other insurance producer qualification require-
5 ments and conditions can be adopted and applied on a
6 multi-state basis, while preserving the right of States to
7 license, supervise, and discipline insurance producers, and
8 to prescribe and enforce laws and regulations with regard
9 to insurance-related consumer protection and unfair trade
10 practices.

11 **“SEC. 323. MEMBERSHIP.**

12 “(a) ELIGIBILITY.—

13 “(1) IN GENERAL.—Any insurance producer li-
14 censed in its home State shall be eligible to become
15 a member in the Association.

16 “(2) INELIGIBILITY FOR SUSPENSION OR REV-
17 OCATION OF LICENSE.—Notwithstanding paragraph
18 (1), a State-licensed insurance producer shall not be
19 eligible to become a member if a State insurance
20 regulator has suspended or revoked such producer’s
21 license in that State during the 3-year period pre-
22 ceding the date on which such producer applies for
23 membership.

24 “(3) RESUMPTION OF ELIGIBILITY.—Paragraph
25 (2) shall cease to apply to any insurance producer
26 if—

1 “(A) the State insurance regulator renews
2 the license of such producer in the State in
3 which the license was suspended or revoked; or

4 “(B) the suspension or revocation is subse-
5 quently overturned.

6 “(4) CRIMINAL BACKGROUND CHECK RE-
7 QUIRED.—

8 “(A) IN GENERAL.—A State-licensed in-
9 surance producer shall not be eligible to become
10 a member unless the producer has submitted to
11 a national criminal background record check.

12 “(B) CRIMINAL BACKGROUND CHECK OR-
13 DERED BY HOME STATE.—Any insurance pro-
14 ducer licensed in a State that, as a condition
15 for such licensure, requires the submission of
16 identification information to the Federal Bu-
17 reau of Investigation for a national criminal
18 background record check shall be deemed to
19 have submitted to a national criminal back-
20 ground record check for purposes of subpara-
21 graph (A).

22 “(C) CRIMINAL HISTORY CHECK ORDERED
23 BY ASSOCIATION.—

24 “(i) IN GENERAL.—The Association
25 may submit identification information ob-

1 tained from any State-licensed insurance
2 producer licensed in a State that has not
3 submitted to a national criminal back-
4 ground record check, and a request for a
5 national criminal background record check
6 of such producer, to the Federal Bureau of
7 Investigation.

8 “(ii) REGULATIONS.—The board of
9 directors of the Association shall prescribe
10 regulations for obtaining identification in-
11 formation and criminal background record
12 information, including the establishment of
13 fees required to perform a criminal back-
14 ground record check.

15 “(D) ATTORNEY GENERAL AUTHORIZA-
16 TION.—Upon receiving a request from the Asso-
17 ciation, the Attorney General shall—

18 “(i) search the records of the Criminal
19 Justice Information Services Division of
20 the Federal Bureau of Investigation, and
21 any other similar database over which the
22 Attorney General has authority and deems
23 appropriate, for any criminal background
24 records (including wanted persons informa-
25 tion) corresponding to the identification in-

1 formation provided under subparagraph
2 (F); and

3 “(ii) provide any relevant information
4 contained in such records that pertain to
5 the request directly to the Association.

6 “(E) RELEVANT INFORMATION DE-
7 FINED.—For purposes of subparagraph (D)(ii),
8 the term ‘relevant information’ means any of
9 the following records:

10 “(i) All felony convictions.

11 “(ii) All misdemeanor convictions in-
12 volving—

13 “(I) violation of a law involving
14 financial activities;

15 “(II) dishonesty or breach of
16 trust, within the meaning of section
17 1033 of title 18, United States Code,
18 including taking, withholding, mis-
19 appropriating, or converting money or
20 property;

21 “(III) failure to comply with
22 child support obligations;

23 “(IV) failure to pay taxes; and

24 “(V) domestic violence, child
25 abuse, burglary of a dwelling, or a

1 criminal offense that has as an ele-
2 ment the use or attempted use of
3 physical force, or threat of great bod-
4 ily harm, or the use, attempted use,
5 or threatened use of a deadly weapon,
6 against an individual, including com-
7 mitting or attempting to commit mur-
8 der, manslaughter, kidnapping, aggra-
9 vated assault, forcible sex offenses,
10 robbery, arson, extortion, and extor-
11 tionate extension of credit.

12 “(F) FORM OF REQUEST.—A request
13 under subparagraph (C) shall include a copy of
14 any necessary identification information re-
15 quired by the Attorney General concerning the
16 person about whom the record is requested and
17 a statement signed by the person acknowledging
18 that the Association may request the search.

19 “(G) LIMITATION ON PERMISSIBLE USES
20 OF INFORMATION.—Information obtained under
21 this section may—

22 “(i) be used only for regulatory or law
23 enforcement purposes or for purposes of
24 determining compliance with membership
25 criteria established by the Association;

1 “(ii) be disclosed only to the Associa-
2 tion, State insurance regulators, or Federal
3 or State law enforcement agencies; and

4 “(iii) be disclosed only if the recipient
5 agrees to—

6 “(I) maintain the confidentiality
7 of such information; and

8 “(II) limit the use of such infor-
9 mation to the purposes described in
10 clause (i).

11 “(H) PENALTY FOR IMPROPER USE.—
12 Whoever uses any information obtained under
13 this section knowingly and willfully for an un-
14 authorized purpose shall be fined under title 18,
15 United States Code, imprisoned for not more
16 than 2 years, or both.

17 “(I) RELIANCE ON INFORMATION.—Nei-
18 ther the Association nor any of its directors, of-
19 ficers, or employees who reasonably rely on in-
20 formation provided under this section shall be
21 liable in any action for using information as
22 permitted under this section in good faith.

23 “(J) CLARIFICATION OF SECTION 1033.—

24 “(i) IN GENERAL.—With respect to
25 any action brought under section

1 1033(e)(1)(B) of title 18, United States
2 Code, no person engaged in the business of
3 conducting financial activities shall be sub-
4 ject to any penalty resulting from such sec-
5 tion if the individual whom the person per-
6 mitted to engage in the business of insur-
7 ance is a member of the Association or is
8 licensed, or approved (as part of an appli-
9 cation or otherwise), by a State insurance
10 regulator that performs criminal back-
11 ground checks under this section, unless
12 such person knows that the individual is in
13 violation of section 1033(e)(1)(A) of such
14 title.

15 “(ii) FINANCIAL ACTIVITIES DE-
16 FINED.—For purposes of this subpara-
17 graph, the term ‘financial activities’—

18 “(I) means banking activities (in-
19 cluding the ownership of a bank), se-
20 curities activities, insurance activities,
21 or commodities activities; and

22 “(II) includes all activities that
23 are financial in nature or are inci-
24 dental to a financial activity (as de-

1 fined under section 4(k) of the Bank
2 Holding Company Act of 1956).

3 “(K) FEES.—The Attorney General may
4 charge a reasonable fee for the provision of in-
5 formation under this paragraph.

6 “(L) RULE OF CONSTRUCTION.—No provi-
7 sion of this paragraph shall be construed as—

8 “(i) requiring a State insurance regu-
9 lator to perform criminal background
10 checks under this section; or

11 “(ii) superseding or otherwise limiting
12 any other authority that allows access to
13 criminal background records.

14 “(M) REGULATIONS.—The Attorney Gen-
15 eral may prescribe regulations to carry out this
16 paragraph.

17 “(N) INELIGIBILITY FOR MEMBERSHIP.—
18 The Association may deny membership to any
19 State-licensed insurance producer on the basis
20 of criminal history information obtained pursu-
21 ant to subparagraph (D).

22 “(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
23 TERIA.—The Association may establish membership cri-
24 teria that—

1 “(1) bear a reasonable relationship to the pur-
2 poses for which the Association was established; and

3 “(2) do not unfairly limit the access of smaller
4 agencies to the Association membership, including
5 imposing discriminatory membership fees on smaller
6 insurance producers.

7 “(c) ESTABLISHMENT OF CLASSES AND CATEGORIES
8 OF MEMBERSHIP.—

9 “(1) CLASSES OF MEMBERSHIP.—The Associa-
10 tion may establish separate classes of membership,
11 with separate criteria, if the Association reasonably
12 determines that performance of different duties re-
13 quires different levels of education, training, experi-
14 ence, or other qualifications.

15 “(2) CATEGORIES.—

16 “(A) SEPARATE CATEGORIES FOR INDIVID-
17 UALS PERMITTED.—The Association may estab-
18 lish separate categories of membership for indi-
19 viduals and for other persons within each class,
20 based on the types of licensing categories that
21 exist under State laws.

22 “(B) SEPARATE TREATMENT FOR DEPOSI-
23 TORY INSTITUTIONS PROHIBITED.—No special
24 categories of membership, and no distinct mem-
25 bership criteria, shall be established for mem-

1 bers which are depository institutions or for
2 employees, agents, or affiliates of depository in-
3 stitutions.

4 “(d) MEMBERSHIP CRITERIA.—

5 “(1) IN GENERAL.—The Association may estab-
6 lish criteria for membership which shall include
7 standards for personal qualifications, education,
8 training, and experience.

9 “(2) QUALIFICATIONS.—In establishing criteria
10 under paragraph (1), the Association shall consider
11 the highest levels of insurance producer qualifica-
12 tions established under the licensing laws of the
13 States.

14 “(3) ASSISTANCE FROM STATES.—

15 “(A) IN GENERAL.—The Association may
16 request a State to provide assistance in inves-
17 tigating and evaluating a prospective member’s
18 eligibility for membership in the Association.

19 “(B) RULE OF CONSTRUCTION.—Subpara-
20 graph (A) shall not be construed as requiring or
21 authorizing any State to adopt new or addi-
22 tional requirements concerning the licensing or
23 evaluation of insurance producers.

24 “(e) EFFECT OF MEMBERSHIP.—

1 “(1) AUTHORITY OF ASSOCIATION MEMBERS.—
2 Membership in the Association shall authorize an in-
3 surance producer to sell, solicit, negotiate, effect,
4 procure, deliver, renew, continue, or bind insurance
5 in any State for any line or lines of insurance speci-
6 fied in such producer’s home State license, and exer-
7 cise all such incidental powers, as shall be necessary
8 to carry out such activities, including claims adjust-
9 ments and settlement, risk management, employee
10 benefits advice, retirement planning, and any other
11 insurance-related consulting activities.

12 “(2) ACTIVITIES OF MEMBERS OF THE ASSO-
13 CIATION.—No State, other than a member’s home
14 State, may, by statute, regulation, order, interpreta-
15 tion, or otherwise, deny a license to a member of the
16 Association which has paid the requisite licensing fee
17 for such State to engage in any activity within the
18 scope of authority granted under paragraph (1).

19 “(3) DUPLICATIVE LICENSES.—Neither the As-
20 sociation nor any State, other than the member’s
21 home State, may require an individual member to
22 obtain a business entity license or membership in
23 order to engage in any activity within the scope of
24 authority granted in paragraph (1) or in order for
25 the member or any employer, employee, or affiliate

1 of the member to receive compensation for the mem-
2 ber's performance of any such activity.

3 “(4) AGENT FOR REMITTING FEES.—The Asso-
4 ciation shall act as any member's agent for purposes
5 of remitting licensing fees to any State pursuant to
6 subparagraph (2).

7 “(5) PRESERVATION OF STATE CONSUMER PRO-
8 TECTION AND MARKET CONDUCT REGULATION.—No
9 provision of this section shall be construed as alter-
10 ing or affecting the continuing effectiveness of any
11 law, regulation, provision, or other action of any
12 State which purports to regulate market conduct or
13 unfair trade practices or establish consumer protec-
14 tions to the extent that such law, regulation, provi-
15 sion, or other action is not inconsistent with the pro-
16 visions of this subtitle.

17 “(f) BIENNIAL RENEWAL.—Membership in the Asso-
18 ciation shall be renewed on a biennial basis.

19 “(g) CONTINUING EDUCATION.—

20 “(1) IN GENERAL.—The Association shall es-
21 tablish, as a condition of membership, continuing
22 education requirements which shall be comparable to
23 the continuing education requirements under the li-
24 censing laws of a majority of the States.

1 “(2) STATE CONTINUING EDUCATION REQUIRE-
2 MENTS.—A member may not be required to satisfy
3 continuing education requirements imposed under
4 the laws, regulations, provisions, or actions of any
5 State other than such member’s home State.

6 “(3) RECIPROCITY.—

7 “(A) LIMITATION ON HOME STATE.—No
8 home State of a member of the Association
9 shall require such member to satisfy any con-
10 tinuing education requirements that are equiva-
11 lent to any continuing education requirements
12 of the Association that have been satisfied by
13 the member during the applicable licensing pe-
14 riod.

15 “(B) LIMITATION ON ASSOCIATION.—The
16 Association shall not require a member to sat-
17 isfy continuing education requirements that are
18 equivalent to any continuing education require-
19 ments of the member’s home State that have
20 been satisfied by the member during the appli-
21 cable licensing period.

22 “(4) LIMITATION ON ASSOCIATION.—The Asso-
23 ciation shall not directly or indirectly offer any con-
24 tinuing education courses for insurance producers.

1 “(h) PROBATION, SUSPENSION AND REVOCATION.—
2 The Association may place an insurance producer that is
3 a member of the Association on probation or suspend or
4 revoke such producer’s membership in the Association, as
5 the Association determines to be appropriate, if—

6 “(1) the producer fails to meet the applicable
7 membership criteria of the Association; or

8 “(2) the producer has been subject to discipli-
9 nary action pursuant to a final adjudicatory pro-
10 ceeding under the jurisdiction of a State insurance
11 regulator.

12 “(i) OFFICE OF CONSUMER COMPLAINTS.—

13 “(1) IN GENERAL.—The Association shall es-
14 tablish an office of consumer complaints that shall—

15 “(A) receive and, when appropriate, inves-
16 tigate complaints from both consumers and
17 State insurance regulators related to members
18 of the Association;

19 “(B) maintain records of all complaints re-
20 ceived in accordance with subparagraph (A) and
21 make such records available to the National As-
22 sociation of Insurance Commissioners (herein-
23 after in this subtitle referred to as the ‘NAIC’)
24 and to each State insurance regulator for the

1 State of residence of the consumer who filed the
2 complaint; and

3 “(C) refer, when appropriate, any such
4 complaint to any appropriate State insurance
5 regulator.

6 “(2) TELEPHONE AND OTHER ACCESS.—The
7 office of consumer complaints shall maintain a toll-
8 free telephone number for the purpose of this sub-
9 section and, as practicable, other alternative means
10 of communication with consumers, such as an Inter-
11 net web page.

12 **“SEC. 324. BOARD OF DIRECTORS.**

13 “(a) ESTABLISHMENT.—There is established the
14 board of directors of the Association (hereafter in this sub-
15 title referred to as the ‘Board’) for the purpose of gov-
16 erning and supervising the activities of the Association
17 and the members of the Association.

18 “(b) POWERS.—The Board shall have such powers
19 and authority as may be specified in the bylaws of the
20 Association.

21 “(c) COMPOSITION.—

22 “(1) IN GENERAL.—The Board shall be com-
23 posed of 9 members, of whom—

1 “(A) 4 shall be State insurance commis-
2 sioners appointed in the manner provided in
3 paragraph (2), and

4 “(B) 5 shall be insurance industry rep-
5 resentatives appointed in the manner provided
6 in paragraph (3).

7 “(2) MEMBERS APPOINTED BY THE NAIC.—

8 “(A) IN GENERAL.—The NAIC shall ap-
9 point 1 member of the Board from among State
10 insurance commissioners in each of the fol-
11 lowing 3 categories of States:

12 “(i) The 18 States with the smallest
13 total direct written premiums from all in-
14 surance policies written in such States.

15 “(ii) The 18 States with the largest
16 total direct written premiums from all in-
17 surance policies written in such States.

18 “(iii) The States that are not among
19 the States described in clauses (i) and (ii).

20 “(B) AT-LARGE MEMBER.—The Board
21 members appointed pursuant to paragraph (A)
22 shall, by majority vote, elect a 4th State insur-
23 ance commissioner to serve as an at-large mem-
24 ber of the Board.

1 “(3) MEMBERS APPOINTED BY INSURANCE
2 TRADE ASSOCIATIONS.—

3 “(A) INSURANCE PRODUCER REPRESENTA-
4 TIVES.—3 of the 5 members who are insurance
5 industry representatives shall be appointed as
6 follows by the following trade associations or
7 their successor organizations:

8 “(i) 1 member appointed by the Coun-
9 cil of Insurance Agents and Brokers from
10 among representatives of such association.

11 “(ii) 1 member appointed by the Inde-
12 pendent Insurance Agents and Brokers of
13 America from among representatives of
14 such association.

15 “(iii) 1 member appointed by the Na-
16 tional Association of Insurance and Finan-
17 cial Advisors from among representatives
18 of such association.

19 “(B) PROPERTY AND CASUALTY INSURER
20 REPRESENTATIVE.—1 of the 5 members who
21 are insurance industry representatives shall be
22 appointed by the American Insurance Associa-
23 tion, the National Association of Mutual Insur-
24 ance Companies, and the Property and Cas-
25 ualty Insurers Association of America from

1 among representatives of each such association,
2 on a rotating basis.

3 “(C) LIFE AND HEALTH INSURER REP-
4 RESENTATIVE.—1 of the 5 members who are
5 insurance industry representatives shall be ap-
6 pointed by the American Council of Life Insur-
7 ers and the Association of Health Insurance
8 Plans from among representatives of each such
9 association, on a rotating basis.

10 “(4) ALTERNATE APPOINTMENT.—

11 “(A) IN GENERAL.—If the NAIC or a
12 nominating group of insurance trade associa-
13 tions fails to make appointments to the Board
14 as required under paragraph (2) or (3), the
15 President shall appoint such members of the
16 Association’s Board from lists of candidates
17 provided by the NAIC, in the case of a member
18 described in paragraph (2) or the nominating
19 group of insurance trade associations pursuant
20 to the relevant subparagraph of paragraph (3),
21 in the case of a member described in any such
22 subparagraph.

23 “(B) PROCEDURES FOR OBTAINING NAIC
24 APPOINTMENT RECOMMENDATIONS.—

1 “(i) PRESIDENTIAL APPOINTMENT
2 FROM LIST.—If the NAIC fails to appoint
3 members of the Board as provided under
4 subparagraph (A) or (B) of paragraph (2)
5 within 60 days after the date of the enact-
6 ment of the National Association of Reg-
7 istered Agents and Brokers Reform Act of
8 2008, the President shall, with the advice
9 and consent of the Senate, appoint 4 mem-
10 bers to the Board who are current State
11 insurance commissioners in accordance
12 with the requirements of subparagraphs
13 (A) and (B) of paragraph (2) from a list
14 of candidates recommended to the Presi-
15 dent by the NAIC.

16 “(ii) PRESIDENTIAL APPOINTMENT
17 WITHOUT A LIST.—If the NAIC fails to
18 provide a list within 90 days after the date
19 of the enactment of the National Associa-
20 tion of Registered Agents and Brokers Re-
21 form Act of 2008, or if any list that is pro-
22 vided does not include at least 8 rec-
23 ommended candidates or comply with the
24 requirements of paragraph (2), the Presi-
25 dent shall, with the advice and consent of

1 the Senate, appoint 4 members to the
2 Board without considering the views of the
3 NAIC, 3 of whom shall meet the selection
4 requirements of paragraph (2)(A) and 1 of
5 whom shall meet the selection require-
6 ments of paragraph (3)(B).

7 “(C) PROCEDURES FOR OBTAINING INSUR-
8 ANCE TRADE ASSOCIATION GROUP APPOINT-
9 MENT RECOMMENDATIONS.—

10 “(i) PRESIDENTIAL APPOINTMENT
11 FROM LIST.—If any group of nominating
12 insurance trade associations identified
13 under subparagraph (A), (B), or (C) of
14 paragraph (3) fails to appoint members of
15 the Board as provided under such subpara-
16 graph within 60 days after the date of the
17 enactment of the National Association of
18 Registered Agents and Brokers Reform
19 Act of 2008, the President shall, with the
20 advice and consent of the Senate, make the
21 requisite appointments pursuant to each
22 such subparagraph from a list of can-
23 didates recommended to the President by
24 such group.

1 “(ii) PRESIDENTIAL APPOINTMENT
2 WITHOUT A LIST.—If the nominating
3 group of insurance trade associations iden-
4 tified under subparagraph (A), (B), or (C)
5 of paragraph (3) fails to provide a list
6 within 90 days after date of the enactment
7 of the National Association of Registered
8 Agents and Brokers Reform Act of 2008,
9 or if any list that is provided does not com-
10 ply with the requirements of the subpara-
11 graph, the President shall, with the advice
12 and consent of the Senate, make the req-
13 uisite appointments without considering
14 the views of such group.

15 “(iii) LIST OF RECOMMENDATIONS.—
16 Any list of recommended candidates pro-
17 vided to the President by a nominating
18 group of insurance trade associations iden-
19 tified under subparagraph (A), (B), or (C)
20 of paragraph (3) shall include—

21 “(I) at least 2 recommended can-
22 didates from each association identi-
23 fied under paragraph (3)(A);

24 “(II) at least 2 recommended
25 candidates, in the case of associations

1 identified under paragraph (3)(B);
2 and

3 “(III) at least 2 recommended
4 candidates, in the case of associations
5 identified under paragraph (3)(C).

6 “(D) ALTERNATE APPOINTMENT OF STATE
7 INSURANCE COMMISSIONERS.—If fewer than 4
8 State insurance commissioners accept appoint-
9 ment to the Board pursuant to subparagraph
10 (B), the President, with the advice and consent
11 of the Senate, may appoint the remaining State
12 insurance commissioner members of the Board
13 from among individuals who are current or
14 former State insurance commissioners, to the
15 extent that—

16 “(i) any former insurance commis-
17 sioner appointed by the President shall not
18 be employed by or have a present direct or
19 indirect financial interest in any insurer or
20 other entity in the insurance industry
21 other than direct or indirect ownership of,
22 or beneficial interest in, any insurance pol-
23 icy or annuity contract written or sold by
24 an insurer; and

1 “(ii) not more than 2 members ap-
2 pointed to membership on the Board under
3 this subparagraph belong to the same po-
4 litical party as the President.

5 “(5) STATE INSURANCE COMMISSIONER DE-
6 FINED.—For purposes of this subsection, the term
7 ‘State insurance commissioner’ means a person who
8 serves in the position in State government, or on the
9 board, commission, or other body that is the prin-
10 cipal insurance regulatory authority for the State.

11 “(d) TERMS.—

12 “(1) IN GENERAL.—The term of each Board
13 member shall, after the initial appointment of the
14 members of the Board, be for 2 years, with ½ of the
15 members to be appointed each year and divided as
16 evenly as possible between members appointed under
17 paragraphs (2) and (3) of subsection (c).

18 “(2) LIMITATION ON SUCCESSIVE TERMS.—
19 Only directors appointed under subsection (c)(3)(A)
20 from among representatives of insurance producers
21 may be re-appointed for an additional term.

22 “(e) BOARD VACANCIES.—

23 “(1) IN GENERAL.—Any vacancy on the board
24 of directors shall be filled as provided under sub-
25 paragraph (A) or (B) of paragraph (2), and any

1 member appointed to fill a vacancy occurring before
2 the expiration of the term for which the member's
3 predecessor was appointed shall be appointed only
4 for the remainder of that term.

5 “(2) ALTERNATE APPOINTMENT.—If the NAIC
6 or a nominating group of trade associations fails to
7 appoint a member to the Board to fill a vacancy
8 within 60 days from the date that such vacancy oc-
9 curs, the President shall, with the advice and con-
10 sent of the Senate, make the requisite appointment
11 pursuant to the procedures established under the ap-
12 plicable subparagraph of subsection (c)(4).

13 “(f) MEETINGS.—The Board shall meet at the call
14 of the chairperson, or as otherwise provided by the bylaws
15 of the Association.

16 **“SEC. 325. OFFICERS.**

17 “(a) POSITIONS.—The officers of the Association
18 shall consist of a chairperson and a vice chairperson of
19 the Board, an executive director, secretary, and treasurer
20 of the Association, and such other officers and assistant
21 officers as may be deemed necessary.

22 “(b) MANNER OF SELECTION.—Each officer of the
23 Board and the Association shall be elected or appointed
24 at such time, in such manner, and for such terms as may
25 be prescribed in the bylaws of the Association.

1 **“SEC. 326. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

2 “(a) ADOPTION AND AMENDMENT OF BYLAWS.—

3 “(1) COPY REQUIRED TO BE FILED.—The
4 board of directors of the Association shall submit to
5 the President and the Congress any proposed bylaw
6 or rules of the Association or any proposed amend-
7 ment to the bylaws or rules, accompanied by a con-
8 cise general statement of the basis and purpose of
9 such proposal.

10 “(2) EFFECTIVE DATE.—Any proposed bylaw
11 or rule or proposed amendment to the bylaws or
12 rules shall take effect, after notice published in an
13 insurance trade journal and opportunity for com-
14 ment, upon such date as the Association may des-
15 ignate.

16 “(b) DISCIPLINARY ACTION BY THE ASSOCIATION.—

17 “(1) SPECIFICATION OF CHARGES.—In any pro-
18 ceeding to determine whether membership shall be
19 denied, suspended, revoked, or not renewed (here-
20 after in this section referred to as a ‘disciplinary ac-
21 tion’) or to determine whether a member of the As-
22 sociation should be placed on probation, the Associa-
23 tion shall bring specific charges, notify such member
24 of such charges, give the member an opportunity to
25 defend against the charges, and keep a record.

1 “(2) SUPPORTING STATEMENT.—A determina-
2 tion to take disciplinary action shall be supported by
3 a statement setting forth—

4 “(A) any act or practice in which such
5 member has been found to have been engaged;

6 “(B) the specific provision of this subtitle,
7 the rules or regulations under this subtitle, or
8 the rules of the Association which any such act
9 or practice is deemed to violate; and

10 “(C) the sanction imposed and the reason
11 for such sanction.

12 **“SEC. 327. POWERS.**

13 “In addition to all the powers conferred upon a non-
14 profit corporation by the District of Columbia Nonprofit
15 Corporation Act, the Association shall have the following
16 powers:

17 “(1) To establish and collect such membership
18 fees as the Association finds necessary to impose to
19 cover the costs of its operations.

20 “(2) To adopt, amend, and repeal bylaws and
21 rules governing the conduct of Association business
22 and performance of its duties.

23 “(3) To establish procedures for providing no-
24 tice and opportunity for comment pursuant to sec-
25 tion 326(a).

1 “(4) To enter into and perform such agree-
2 ments as necessary to carry out its duties.

3 “(5) To hire employees, professionals or special-
4 ists, and elect or appoint officers, and to fix their
5 compensation, define their duties and give them ap-
6 propriate authority to carry out the purposes of this
7 subtitle, and determine their qualification; and to es-
8 tablish the Association’s personnel policies and pro-
9 grams relating to, among other things, conflicts of
10 interest, rates of compensation. and qualifications of
11 personnel.

12 “(6) To borrow money.

13 “(7) To assess board member organizations and
14 associations fees for such amounts that the Associa-
15 tion determines to be necessary and appropriate to
16 organize and begin operations of the Association,
17 which shall be treated as loans to be repaid by the
18 Association with interest at market rate.

19 **“SEC. 328. REPORT BY ASSOCIATION.**

20 “(a) IN GENERAL.—As soon as practicable after the
21 close of each fiscal year, the Association shall submit to
22 the President and to the Congress a written report regard-
23 ing the conduct of its business, and the exercise of the
24 other rights and powers granted by this subtitle, during
25 such fiscal year.

1 “(b) FINANCIAL STATEMENTS.—Each report sub-
2 mitted under subsection (a) with respect to any fiscal year
3 shall include financial statements setting forth the finan-
4 cial position of the Association at the end of such fiscal
5 year and the results of its operations (including the source
6 and application of its funds) for such fiscal year.

7 **“SEC. 329. LIABILITY OF THE ASSOCIATION AND THE DI-**
8 **RECTORS, OFFICERS, AND EMPLOYEES OF**
9 **THE ASSOCIATION.**

10 “(a) IN GENERAL.—The Association shall not be
11 deemed to be an insurer or insurance producer within the
12 meaning of any State law, rule, regulation, or order regu-
13 lating or taxing insurers, insurance producers, or other en-
14 tities engaged in the business of insurance, including pro-
15 visions imposing premium taxes, regulating insurer sol-
16 vency or financial condition, establishing guaranty funds
17 and levying assessments, or requiring claims settlement
18 practices.

19 “(b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
20 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
21 tion nor any of its directors, officers, or employees shall
22 have any liability to any person for any action taken or
23 omitted in good faith under or in connection with any mat-
24 ter subject to this subtitle.

1 **“SEC. 330. PRESIDENTIAL REVIEW.**

2 “(a) REMOVAL.—If the President determines and
3 certifies to the Speaker of the House, the House Minority
4 Leader, the Senate Majority Leader and the Senate Mi-
5 nority Leader that the Association is acting in a manner
6 contrary to the purposes of this subtitle or has failed to
7 perform its duties under this subtitle, the President may
8 remove the entire existing Board for the remainder of the
9 term to which the members of the Board were appointed
10 and appoint, in accordance with section 324(c)(4) with the
11 advice and consent of the Senate, new members to fill the
12 vacancies on the Board for the remainder of such terms.

13 “(b) SUSPENSION OF RULES OR ACTIONS.—The
14 President, or a person designated by the President for
15 such purpose, may suspend the effectiveness of any rule,
16 or prohibit any action, of the Association which the Presi-
17 dent or the designee determines and certifies to the Speak-
18 er of the House, the House minority leader, the Senate
19 majority leader, and the Senate minority leader is contrary
20 to the purposes of this subtitle.

21 **“SEC. 331. RELATIONSHIP TO STATE LAW.**

22 “(a) PREEMPTION OF STATE LAWS.—State laws,
23 regulations, provisions, or other actions purporting to reg-
24 ulate insurance producers shall be preempted to the extent
25 provided in subsection (b).

26 “(b) PROHIBITED ACTIONS.—

1 “(1) IN GENERAL.—No State shall—

2 “(A) impede the activities of, take any ac-
3 tion against, or apply any provision of law or
4 regulation to, any insurance producer because
5 that insurance producer or any affiliate plans to
6 become, has applied to become, or is a member
7 of the Association;

8 “(B) impose any requirement upon a mem-
9 ber of the Association that it pay different fees
10 to be licensed or otherwise qualified to do busi-
11 ness in that State based on its residency;

12 “(C) impose any continuing education re-
13 quirements on non-resident insurance pro-
14 ducers; or

15 “(D) impose any licensing, registration, or
16 appointment requirements upon or impede the
17 activities of any non-resident insurance pro-
18 ducer that sells, solicits, negotiates, effects, pro-
19 cures, delivers, renews, continues, or binds in-
20 surance for commercial property and casualty
21 risks to an insured with risks located in more
22 than one State, provided that such non-resident
23 insurance producer is otherwise licensed as an
24 insurance producer in the State where the in-
25 sured maintains its principal place of business

1 and the contract of insurance insures risks lo-
2 cated in that State.

3 “(2) STATES OTHER THAN A HOME STATE.—

4 No State, other than a member’s home State,
5 shall—

6 “(A) impose any licensing, appointment,
7 integrity, personal or corporate qualifications,
8 education, training, experience, residency, con-
9 tinuing education or bonding requirement upon
10 a member of the Association that is different
11 from the criteria for membership in the Asso-
12 ciation or renewal of such membership;

13 “(B) implement the procedures of such
14 State’s system of licensing or renewing the li-
15 censes of insurance producers in a manner dif-
16 ferent from the authority of the Association
17 under section 323;

18 “(C) impose any requirement upon a mem-
19 ber of the Association that it be licensed, reg-
20 istered or otherwise qualified to do business or
21 remain in good standing in such State, includ-
22 ing any requirement that such insurance pro-
23 ducer register as a foreign company with the
24 secretary of state or equivalent State official; or

1 “(D) require that a member of the Asso-
2 ciation submit to a criminal history record
3 check as a condition of doing business in such
4 State.

5 **“SEC. 332. COORDINATION WITH OTHER REGULATORS.**

6 “(a) COORDINATION WITH STATE INSURANCE REGU-
7 LATORS.—The Association may—

8 “(1) issue uniform insurance producer applica-
9 tions and renewal applications that may be used to
10 apply for the issuance or removal of State licenses;

11 “(2) establish or utilize a central clearinghouse
12 through which members of the Association may
13 apply for the issuance or renewal of licenses in mul-
14 tiple States; and

15 “(3) establish or utilize a national database for
16 the collection of regulatory information concerning
17 the activities of insurance producers.

18 “(b) COORDINATION WITH THE FINANCIAL INDUS-
19 TRY REGULATORY AUTHORITY.—The Association shall
20 coordinate with the Financial Industry Regulatory Au-
21 thority in order to ease any administrative burdens that
22 fall on persons that are members of both associations, con-
23 sistent with the purposes of this subtitle and the Federal
24 securities laws.

1 **“SEC. 333. JUDICIAL REVIEW AND ENFORCEMENT.**

2 “(a) JURISDICTION.—The appropriate United States
3 district court shall have exclusive jurisdiction over litiga-
4 tion involving the Association, including disputes between
5 the Association and its members that arise under this sub-
6 title. Suits brought in State court involving the Associa-
7 tion shall be deemed to have arisen under Federal law and
8 therefore be subject to jurisdiction in the appropriate
9 United States district court.

10 “(b) EXHAUSTION OF REMEDIES.—An aggrieved
11 person shall be required to exhaust all available adminis-
12 trative remedies before the Association before it may seek
13 judicial review of an Association decision.

14 “(c) ENFORCEMENT.—In the case of any violation of
15 section 323(e) or 331(b), the Association may seek injunc-
16 tive relief in the United States District Court for the Dis-
17 trict of Columbia.

18 “(d) STANDARDS OF REVIEW.—

19 “(1) JUDICIAL REVIEW OF RULES AND BY-
20 LAWS.—The standards set forth in section 553 of
21 title 5, United States Code, shall be applied when-
22 ever a regulation or bylaw of the Association is
23 under judicial review.

24 “(2) JUDICIAL REVIEW OF DISCIPLINARY AC-
25 TIONS.—The standards set forth in section 554 of
26 title 5, United States Code, shall be applied when-

1 ever a disciplinary action of the Association is judi-
2 cially reviewed.

3 “(3) EQUAL WEIGHT AND DEFERENCE.—In any
4 other proceeding involving this subtitle, the court
5 shall give at least equal weight and deference to the
6 interpretations of the Association as would be given
7 to any State or Federal agency with respect to any
8 law, regulation, interpretation, or order addressing
9 the same issues.

10 **“SEC. 334. DEFINITIONS.**

11 “For purposes of this subtitle, the following defini-
12 tions shall apply:

13 “(1) HOME STATE.—The term ‘home State’
14 means the State in which the insurance producer
15 maintains its principal place of residence or business
16 and is licensed to act as an insurance producer.

17 “(2) INSURANCE.—The term ‘insurance’ means
18 any product, other than title insurance, defined or
19 regulated as insurance by the appropriate State in-
20 surance regulatory authority.

21 “(3) INSURANCE PRODUCER.—The term ‘insur-
22 ance producer’ means any insurance agent or
23 broker, excess or surplus lines broker or agent, in-
24 surance consultant, limited insurance representative,
25 and any other individual or entity that solicits, nego-

1 tiates, effects, procures, delivers, renews, continues
 2 or binds policies of insurance or offers advice, coun-
 3 sel, opinions or services related to insurance.

4 “(4) STATE.—The term ‘State’ includes any
 5 State, the District of Columbia, any territory of the
 6 United States, and Puerto Rico, Guam, American
 7 Samoa, the Trust Territory of the Pacific Islands,
 8 the Virgin Islands, and the Northern Mariana Is-
 9 lands.

10 “(5) STATE LAW.—

11 “(A) IN GENERAL.—The term ‘State law’
 12 includes all laws, decisions, rules, regulations,
 13 or other State action having the effect of law,
 14 of any State.

15 “(B) LAWS APPLICABLE IN THE DISTRICT
 16 OF COLUMBIA.—A law of the United States ap-
 17 plicable only to or within the District of Colum-
 18 bia shall be treated as a State law rather than
 19 a law of the United States.”.

20 (b) CLERICAL AMENDMENT.—The table of contents
 21 for the Gramm-Leach-Bliley Act is amended by striking
 22 the items relating to subtitle C of title III and inserting
 23 the following new items:

“Subtitle C—National Association of Registered Agents and Brokers

“Sec. 321. National association of registered agents and brokers.

“Sec. 322. Purpose.

“Sec. 323. Membership.

- “Sec. 324. Board of directors.
- “Sec. 325. Officers.
- “Sec. 326. Bylaws, rules, and disciplinary action.
- “Sec. 327. Powers.
- “Sec. 328. Report by association.
- “Sec. 329. Liability of the association and the directors, officers, and employees
of the association.
- “Sec. 330. Presidential review.
- “Sec. 331. Relationship to state law.
- “Sec. 332. Coordination with other regulators.
- “Sec. 333. Judicial review and enforcement.
- “Sec. 334. Definitions.”.

